

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

January 14, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-2735**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**Robert F. Amter,**

**Plaintiff-Respondent,**

**v.**

**Ladish Company, Inc.,**

**Defendant-Appellant,**

**Sutton & Kelly, Walter F. Kelly and  
Robert E. Sutton,**

**Defendants.**

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN J. DiMOTTO, Judge. *Reversed and cause remanded.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Ladish Company, Inc., appeals from a judgment entered following a jury trial and postverdict motions. Ladish claims that it is entitled to a new trial because the jury instructions and a special verdict

question misled the jury. Because the trial court's instruction to the jury on cause improperly interfered with the fact-finding function of the jury, we reverse the judgment and remand for a new trial.<sup>1</sup>

## I. BACKGROUND

In March 1992, Robert F. Amter was asked to review the financial condition at Ladish, which was losing money and facing the prospect of bankruptcy. Amter performed an assessment of the company and concluded that the then current president was contributing to the financial decline of the company. Ladish fired the current president and hired Amter as the new president and chief executive officer. He began work in this capacity in April 1992.

Shortly thereafter, Amter helped negotiate new severance benefit packages for certain officers of the company. The new package stated in pertinent part:

In the event the officer loses his position and/or has his employment terminated as a result of a change of control or ownership to Ladish, or should the new company or its owners fail to offer the officer a like position to his current status with equivalent compensation and benefits, including but not limited to the benefit contained herein, then Ladish, or its successor in interest, shall provide the officer with two (2) years salary and benefits. The officer shall have the option of taking the salary in one lump sum payment or having it paid monthly over the two (2) year period.

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<sup>1</sup> Because of our disposition of this case it is not necessary for us to address the remaining issues that Ladish raised on appeal: (1) whether an additional jury instruction regarding the new owners' intent to retain existing management should have been given; (2) whether the trial court erred in formulating the special verdict question; and (3) whether the trial court erred in admitting certain evidence. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issues need be addressed).

Amter also convinced the company to append to this agreement, the following language pertinent to him:

In addition, Robert Amter shall receive the equivalent benefits as outlined above in the case of change of control or ownership of Ladish. Further, should Robert Amter lose his position at Ladish for any reason other than change of ownership or control, except for dismissal for cause, he shall be entitled to one (1) year of salary as severance benefits.

The "dismissal for cause" term was not defined in the agreement.

Effective April 1993, Ladish underwent a reorganization approved by the United States Bankruptcy Court. Under the reorganization plan the bondholders of Ladish became its new owners. When the new owners assumed control on April 30, 1993, all of the current management was retained. The new owners also hired outside consultants to help bring the company out of bankruptcy and appointed a new board of directors. The primary consultant was Vincent Naimoli, who was to act as managing chairman of the board of directors.

Naimoli and the other consultants prepared new strategies to turn the company around, one of which involved a cost reduction plan. Conflict developed between Naimoli and Amter, who had different views with respect to how to save the company. Amter refused to implement the new directives and strategies.

At the June 1993 board meeting, Amter's conduct in resisting the new strategies was raised and discussed. Amter's resistance to new strategies was described as "curt" and "flippant." Subsequent to this meeting the board voted unanimously to terminate Amter because he failed to follow management directives.

After he was terminated, Amter requested that Ladish pay him his severance benefits. Ladish refused on the basis that Amter was fired for cause and therefore not entitled to any benefits. Amter commenced this suit against Ladish.

The case was tried to a jury. Amter argued that he was terminated as a result of change in ownership or control of the company. Amter argued that he was not terminated for cause because his conduct in resisting the management directives was in the best interest of the company. He presented evidence regarding what constituted a "for cause" firing, which included sexual harassment or stealing from the company.

In direct conflict with Amter's interpretation of cause, Ladish argued that Amter was fired for cause and presented evidence that "cause" included an executive's failure to implement the initiatives and strategies of the board of directors. The trial court charged the jury with the following "cause" instruction: "Cause is defined as action which shows an intentional and substantial disregard for the interest of the employer."

The jury ruled in Amter's favor, and awarded two years salary, outplacement fees and two years medical benefits. The trial court granted Ladish's postverdict motion to set aside the jury's verdict for outplacement fees and medical benefits because there was no evidence to support such an award. It denied Ladish's motion to set aside the jury's verdict with respect to the salary. Ladish now appeals.

## I. DISCUSSION

Ladish claims the trial court erred in instructing the jury and formulating the special verdict. These are issues that we review under the erroneous exercise of discretion standard of review. *Fischer v. Ganju*, 168 Wis.2d 834, 849, 485 N.W.2d 10, 16 (1992). We address only the "cause" instruction and conclude that this instruction improperly influenced the jury's fact-finding function. Accordingly, we hold that the trial court erroneously exercised its discretion in giving this instruction. We reverse and remand for a new trial.

The agreement that Ladish and Amter entered into contained the following pertinent language: “[S]hould Robert Amter lose his position at Ladish for any reason other than change of ownership or control, except for dismissal for cause, he shall be entitled to one (1) year of salary as severance benefits.” The phrase “dismissal for cause” was not defined. The drafter of the severance agreement testified that this term was undefined to purposely leave its meaning vague to allow the company flexibility in dealing with executive terminations. We conclude that the phrase, “dismissal for cause,” was ambiguous and as a result, it is necessary to look to the intent of the parties to determine its meaning. *Capital Investments, Inc. v. Whitehall Packing Co., Inc.*, 91 Wis.2d 178, 190, 280 N.W.2d 254, 259 (1979). The intent of the parties regarding the meaning of this term is a question of fact. See *Brown v. Hammermill Paper Co.*, 88 Wis.2d 224, 234, 276 N.W.2d 709, 713 (1979).

At trial, Ladish presented evidence regarding its intention as to the meaning of “cause.” Witnesses testified that “cause” means insubordination and failure to follow management directives. Amter, however, presented conflicting evidence as to how “cause” should be defined. Amter’s witnesses testified that “cause” is intended to refer to situations where a serious offense has occurred such as dishonesty, stealing, blatant negligence, or behavior that is extreme and unacceptable. The entire issue in this case was whether Amter was terminated as a result of change in ownership or whether Amter was terminated for cause. This was a factual issue for the jury to decide.

The trial court’s instruction on “cause” improperly influenced the jury’s determination because it, in effect, prevented the jury from considering Ladish’s definition of “cause.” The instruction specifically defined cause for the jury in a way which could lead the jury to the only conclusion that it reached: that Amter was not terminated for cause. The instruction defined “cause” as “action which shows an intentional and substantial disregard for the interests of the employer.” This definition supported Amter’s version of what constitutes cause, but did not support Ladish’s. As a result, the jury was not allowed to resolve this dispute. Because the dispute was solely an issue of fact for that jury, and because the trial court’s “cause” instruction effectively took this factual issue away from the jury, the instruction was erroneous. Accordingly, we reverse the judgment and remand for a new trial.

*By the Court.* – Judgment reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.